

AMENDED IN SENATE MAY 31, 2011
AMENDED IN SENATE MAY 10, 2011
AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 252

Introduced by Senator Vargas

February 10, 2011

An act to add Article 4.5 (commencing with Section 19135) to Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 252, as amended, Vargas. Public contracts: personal services.

The California Constitution provides that the civil service includes every officer and employee of the state, except as otherwise provided. The California courts have interpreted the California Constitution as generally restricting the contracting out of state activities or tasks to the private sector, if those activities or tasks may be adequately and competently performed by state employees. Existing statutory law codifies certain judicially created exceptions to that constitutional provision, and authorizes the state to enter into personal services contracts when specified conditions are met.

The California Public Records Act requires each state and local agency to make its records available for public inspection during office hours and, upon request of any person, to make copies available upon payment of fees, unless the records are exempt by law from disclosure.

This bill would enact the Government Oversight and Fiscal Accountability Review Act of 2011. The bill would require a state agency *or department* that enters into a privatization contract, as defined,

to report to the Department of General Services, *on or before April 1, 2012, and annually each April 1 thereafter*, regarding that privatization contract, and would require the ~~department~~ *Department of General Services* to compile, publish, and make that report available for public inspection. The bill would also provide that a subcontract executed under a privatization contract is a public record, and would require the contractor to submit these subcontracts to the contracting agency, which would in turn be required to make the records available to the public pursuant to the California Public Records Act. State agencies *and departments* would also be required to prepare, as part of their budget requests, a document that contains specified information relating to their use of privatization contractors. ~~The bill would also make privatization contracts subject to audit or review by the Bureau of State Audits, at the discretion of the State Auditor.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 4.5 (commencing with Section 19135) is
 2 added to Chapter 5 of Part 2 of Division 5 of Title 2 of the
 3 Government Code, to read:

4
 5 Article 4.5. Government Oversight and Fiscal Accountability
 6 Review
 7

8 19135. This article shall be known, and may be cited, as the
 9 Government Oversight and Fiscal Accountability Review Act of
 10 2011.

11 19136. For purposes of this article:

12 (a) “Agency” includes any ~~executive office, department,~~
 13 ~~division, board, commission, or other office or officer in the~~
 14 ~~executive branch of the government.~~ *state agency or department.*

15 (b) “Person” includes an individual, institution, federal, state,
 16 or local government entity, or any other public or private entity.

17 (c) “Privatization contract” means an agreement or combination
 18 or series of agreements executed pursuant to Section 19130, by
 19 which a privatization contractor agrees with an agency to provide
 20 services valued at ~~one five hundred thousand dollars (\$100,000)~~
 21 *(\$500,000)* or more, that are substantially similar to, and in lieu

1 of, services provided, in whole or in part, by civil service
2 employees of the agency.

3 (d) “Privatization contractor” means any contractor, consultant,
4 subcontractor, independent contractor, or private business owner
5 that contracts with an agency to perform services that are
6 substantially similar to, and in lieu of, services provided, in whole
7 or in part, by civil service employees of the agency.

8 (e) “Privatization contractor employee” includes a worker
9 directly employed by a privatization contractor, as well as an
10 employee of a subcontractor or an independent contractor that
11 provides supplies or services to a privatization contractor.

12 (f) “Services” includes, with respect to a privatization contractor,
13 all aspects of the provision of services provided by a privatization
14 contractor pursuant to a privatization contract, or any services
15 provided by a subcontractor of a privatization contractor under the
16 privatization contract.

17 19137. (a) A privatization contractor shall file with the
18 contracting agency a copy of each subcontract or amendment to a
19 subcontract executed under a privatization contract. The agency
20 shall maintain the subcontract or amendment to the subcontract as
21 a public record, as defined in the California Public Records Act
22 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
23 Title 1).

24 (b) A privatization contract shall include language that provides
25 for public access to the completed contract.

26 (c) As part of the budgetary process, an agency shall provide
27 an addendum to its submitted budget request that includes all of
28 the following information:

29 (1) The name of each privatization contractor or subcontractor
30 that has entered into a privatization contract with the agency during
31 that year, the duration of that privatization contract, and the services
32 provided pursuant to that contract.

33 (2) The total cost of each privatization contract for the prior
34 year.

35 (3) The projected number of privatization contracts for the
36 current and upcoming year and the estimated cost of each contract
37 for the current and upcoming year.

38 (4) For each privatization contract, the number of privatization
39 contractor employees and consultants, reflected as full-time

1 equivalent positions, and their hourly wage rates for the current
2 and previous fiscal year.

3 (d) The addendum provided pursuant to subdivision (c) shall
4 be a public record.

5 ~~(e) A privatization contract shall be subject to audit or review,~~
6 ~~as defined by the American Institute of Certified Public~~
7 ~~Accountants, by the Bureau of State Audits at the discretion of the~~
8 ~~State Auditor. An audit or review shall be conducted in compliance~~
9 ~~with generally accepted auditing standards.~~

10 ~~19138. (a) An agency that enters into a privatization contract~~
11 ~~shall prepare and submit to the Department of General Services~~
12 ~~on a quarterly basis a report containing both of the following:~~

13 ~~(1) The name of the privatization contractor and the number of~~
14 ~~privatization contractor employees and consultants, reflected as~~
15 ~~full-time equivalent positions, that performed legal, medical,~~
16 ~~accounting, engineering, or any other professional, technical, or~~
17 ~~consultant service for the agency on a contractual basis during the~~
18 ~~previous quarter.~~

19 ~~(2) The amount of compensation received by each privatization~~
20 ~~contractor employee or consultant for the services described in~~
21 ~~paragraph (1) during the previous quarter.~~

22 (b)

23 ~~19138. (a) An agency that enters into a privatization contract~~
24 ~~shall prepare and submit to the Department of General Services~~
25 ~~on an annual basis Services, on or before April 1, 2012, and~~
26 ~~annually each April 1 thereafter, a report containing both all of~~
27 ~~the following:~~

28 (1) A copy of each privatization contract for that year.

29 (2) A budget analysis of each privatization contract reported
30 pursuant to paragraph (1) that contains all of the following:

31 (A) The cost of each privatization contract for the prior, current,
32 and next year.

33 (B) The number of privatization contractor employees, reflected
34 as full-time equivalent positions, and their hourly wage rates.

35 (C) The cost of benefits paid by the agency for each privatization
36 employee for the current and previous year.

37 (3) *The name of the privatization contractor and the number of*
38 *privatization contractor employees and consultants, reflected as*
39 *full-time equivalent positions, that performed legal, medical,*
40 *accounting, engineering, or any other professional, technical, or*

1 *consultant service for the agency on a contractual basis during*
2 *the previous year.*

3 *(4) The amount of compensation received by each privatization*
4 *contractor employee or consultant for the services described in*
5 *paragraph (3) during the previous year.*

6 ~~(e)~~

7 *(b) The Department of General Services shall compile, publish,*
8 *and make available for public inspection all contracting reports he*
9 *or she has received in accordance with this article.*

O